

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD)(SN) ECF Case
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This document relates to:

*Audrey Ades, et al. v. Islamic Republic of Iran, No. 1:18-cv-07306 (GBD)(SN)*

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO  
AMEND TO CORRECT ERRORS**

Plaintiffs by undersigned counsel submit this Memorandum of Law in Support of Motion for Leave to Amend to Correct Errors, and say:

**BACKGROUND**

Plaintiffs are comprised of personal representatives and eligible family members of individuals killed in the terrorist attacks against the United States on September 11, 2001 (the “September 11<sup>th</sup> Attacks”). The only defendant in this case is Iran. On August 13, 2018, plaintiffs commenced suit against Iran by the filing of a Complaint. ECF 1. Iran was served on September 17, 2018 pursuant to 1608(a)(4). ECF 19. Iran failed to serve an answer or otherwise file a responsive pleading within sixty (60) days after service, and the Clerk issued a Certificate of Default on February 28, 2019. ECF 34. Plaintiffs have not yet applied for either a finding of liability or a judgment on damages.

Plaintiffs’ counsel conducted extensive quality control before filing and has continued its quality control process after filing the Complaint, during which time it has continued to obtain additional information from clients and family members of clients to complete its files. In so doing, counsel has determined that certain minor errors were contained in the Complaint filed in the above-referenced matter, such as name misspellings, incorrect states of residence, and certain

plaintiffs were incorrectly identified with respect to their relationship to the individual who died in the September 11<sup>th</sup> Attacks (e.g., a sibling of the victim incorrectly identified as a child). None of the corrections constitute substantial changes that would potentially warrant additional service of an amended pleading on Iran.

Through the instant Motion, Plaintiffs seek to correct such errors before proceeding to default judgment so as to ensure the record is accurate. None of the modifications requested herein affect the substantive claims or relief sought. No new claims are asserted, and no additional plaintiffs have been added. Moreover, because the changes are insubstantial, no additional service on Iran is required.

## ARGUMENT

### I. LEGAL STANDARD

The Federal Rules of Civil Procedure make clear that leave to amend the complaint should be "freely given when justice so requires." Fed. R. Civ. P. 15(a). "This 'permissive standard . . . is consistent with [the] strong preference for resolving disputes on the merits.'" *Media Glow Dig., LLC v. Panasonic Corp. of N. Am.*, 2018 U.S. Dist. LEXIS 207922, at \*12 (S.D.N.Y. Dec. 10, 2018) quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d at 190. Leave to amend should only be denied in "instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party." *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008). It is well settled that "[d]istrict courts are vested with broad discretion to grant a party leave to amend the pleadings." *Ruggles v. Wellpoint, Inc.*, 687 F. Supp. 2d 30, 33 (N.D.N.Y. 2009).

### II. PLAINTIFF'S SHOULD BE PERMITTED TO AMEND THE PLEADINGS

**A. Plaintiffs' Request for Leave to Amend Should Be Granted Under the Permissive Standard Set Forth In Rule 15(a).**

Here, Plaintiffs only seek to correct what can best be characterized as typographical errors. There are no new claims asserted or any change in the substantive relief sought. Instead, the record will be made to accurately reflect the names, states of residence, and other data of each of the Plaintiffs. Such proposed amendments, as specifically itemized below, clearly do not constitute "instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party" and, therefore, should be permitted. *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008).

**i. Plaintiff Name Corrections:**

The following Plaintiffs' names were misspelled or should have had a more specific Personal Representative designation:

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
1.	1:18-cv-07306	Gardini, Margaret	Frawley-Gardini, Margaret
2.	1:18-cv-07306	Weiner, Rachel Dana Aron	Weiner, Rachel Dana Aron, individually, as surviving spouse of Joshua Aron, and as the Personal Representative of the Estate of Joshua Aron, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Joshua Aron
3.	1:18-cv-07306	Francine Calabro	Calabro, Francine, as the Personal Representative of the Estate of Salvatore B. Calabro, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Salvatore B. Calabro
4.	1:18-cv-07306	Callahan, Angela	Callahan, Angela, individually, as surviving spouse of Francis J. Callahan, and as the Personal Representative of the Estate of Francis J. Callahan, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Francis J. Callahan

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
5.	1:18-cv-07306	Camaj, Katrina	Camaj, Katrina, individually, as surviving spouse of Roko Camaj, and as the Personal Representative of the Estate of Roko Camaj, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Roko Camaj
6.	1:18-cv-07306	Perry, Freddye Jean-Carter	Carter-Perry, Freddye Jean, as the Personal Representative of the Estate of Angelene C. Carter, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Angelene C. Carter
7.	1:18-cv-07306	Cascio, Evan	Cascio, Evan, as the Personal Representative of the Estate of Paul R. Cascio, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Paul R. Cascio
8.	1:18-cv-07306	Dataram, Mahadai	Dataram, Mahadai, individually, as surviving parent of Annette A. Dataram, and as the Personal Representative of the Estate of Annette A. Dataram, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Annette A. Dataram
9.	1:18-cv-07306	DeRubbio, Lorraine D.	DeRubbio, Lorraine D., individually, as surviving spouse of David P. DeRubbio, and as the Personal Representative of the Estate of David P. DeRubbio, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of David P. DeRubbio
10.	1:18-cv-07306	Desperito-Filiberto, Laura	Desperito-Filiberto, Laura, as the Personal Representative of the Estate of Andrew Desperito, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Andrew Desperito
11.	1:18-cv-07306	Fox-Breland, Allison	Fox-Breland, Allison, individually, as surviving child of Virginia E. Fox, and as the Personal Representative of the Estate of Virginia E. Fox, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Virginia E. Fox
12.	1:18-cv-07306	Ades, Audrey	Ades, Audrey, as the Personal Representative of the Estate of Paul Friedman, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Paul Friedman

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
13.	1:18-cv-07306	Grijalvo, Nenita	Grijalvo, Nenita, individually, as surviving spouse of Ramon Grijalvo, and as the Personal Representative of the Estate of Ramon Grijalvo, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Ramon Grijalvo
14.	1:18-cv-07306	Gschaar, Myrta	Gschaar, Myrta, as the Personal Representative of the Estate of Robert Gschaar, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Robert Gschaar
15.	1:18-cv-07306	McKinzy, Gary	McKinzy, Gary, as the Personal Representative of the Estate of Diane Hale-McKinzy, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Diane Hale-McKinzy
16.	1:18-cv-07306	Haskell, Barbara	Haskell, Barbara, individually, as surviving spouse of Thomas Haskell, and as the Personal Representative of the Estate of Thomas Haskell, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Thomas Haskell
17.	1:18-cv-07306	Lyons, Jewel	Lyons, Jewel, as the Personal Representative of the Estate of Nehamon Lyons, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Nehamon Lyons
18.	1:18-cv-07306	Milam, Jacqueline	Milam, Jacqueline, as the Personal Representative of the Estate of Major Ronald D. Milam, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Major Ronald D. Milam
19.	1:18-cv-07306	Miller, Laurie	Miller, Laurie, as the Personal Representative of the Estate of Douglas C. Miller, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Douglas C. Miller
20.	1:18-cv-07306	Racklin, Kim	Racklin, Kim, as the Personal Representative of the Estate of John Moran, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of John Moran

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
21.	1:18-cv-07306	Murphy, Masako	Murphy, Masako, individually, as surviving spouse of Patrick J. Murphy, and as the Personal Representative of the Estate of Patrick J. Murphy, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Patrick J. Murphy
22.	1:18-cv-07306	Sanay, Clara	Sanay, Clara, as the Personal Representative of the Estate of Hugo Sanay, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Hugo Sanay
23.	1:18-cv-07306	Seeliger, Bruce	Seeliger, Bruce, as the Personal Representative of the Estate of Margaret Seeliger, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Margaret Seeliger
24.	1:18-cv-07306	Spitz, Susan	Spitz, Susan, individually, as surviving spouse of William Spitz, and as the Personal Representative of the Estate of William Spitz, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of William Spitz
25.	1:18-cv-07306	Strauss, Jean	Strauss, Jean ALSO KNOWN AS Strauss, Jeannie, as the Personal Representative of the Estate of Steven Strauss, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Steven Strauss
26.	1:18-cv-07306	Sullivan, Dolores	Sullivan, Dolores, individually, as surviving spouse of Christopher P. Sullivan, as the Personal Representative of the Estate of Christopher P. Sullivan, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Christopher P. Sullivan
27.	1:18-cv-07306	Marsella, Jill	Marsella, Jill, as the Personal Representative of the Estate of Thomas F. Swift, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Thomas F. Swift
28.	1:18-cv-07306	Woolen, Sandra	Woolen, Sandra Faye, as the Personal Representative of the Estate of Tamara Thurman, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Tamara Thurman



	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
29.	1:18-cv-07306	Wallace, Charlotte	Wallace, Charlotte, individually, as surviving spouse of Peter G. Wallace, as the Personal Representative of the Estate of Peter G. Wallace, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Peter G. Wallace
30.	1:18-cv-07306	Young, Chaquita	Young, Chaquita, individually, as surviving child of Lisa L. Young, as the Personal Representative of the Estate of Lisa L. Young, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Lisa L. Young
31.	1:18-cv-07306	Zambrana, Lillian	Zambrana, Lillian, individually, as surviving parent of Edwin J. Zambrana, as the Personal Representative of the Estate of Edwin J. Zambrana, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Edwin J. Zambrana

**ii. Plaintiffs Whose Claim is Solely in Individual Capacity**

The following Plaintiffs have only solatium claims and are not the administrator of an estate:

	Case Number	Plaintiff's Name	Claim as Pled	Claim as Amended
1.	1:18-cv-07306	Depena, Maxima	Solatium/Wrongful Death	Solatium
2.	1:18-cv-07306	Frawley, Theresa	Solatium/Wrongful Death	Solatium

**iii. Plaintiffs' Whose Relationship to 9/11 Decedent is Incorrectly described:**

The familial relationship to the 9/11 Decedent of the following Plaintiffs was incorrectly described:

	Case Number	Plaintiff's Name	Plaintiff's Relationship to 9/11 Decedent as Pled	Plaintiff's Relationship to 9/11 Decedent as Amended
1.	1:18-cv-07306	Depena, Maxima	Spouse/PR	Spouse
2.	1:18-cv-07306	Frawley, Theresa	Sister/PR	Sister

**iv. Decedent Whose Citizenship/Nationality on 9/11 is Incorrectly described:**

The Decedent's Citizenship/Nationality on 9/11 of the following Decedent was incorrectly described:

	Case Number	Decedent's Name	Decedent's Citizenship/Nationality on 9/11/01 as Pled	Plaintiff's Citizenship/Nationality on 9/11/01 as Amended
1.	1:18-cv-07306	Sunry, Hugo	United States	Ecuador

**B. No Additional Service Is Required Because The Changes Contained In The Amended Pleadings Are Insubstantial.**

In this case, Plaintiffs properly served Iran in accordance with the Foreign Sovereign Immunities Act and, after Iran failed to timely respond, the Clerk of Court issued a Certificate of Default. *See* ECF 34. Plaintiffs now seek to make the aforementioned corrections, which are insubstantial. It is well settled that no additional service is required under these circumstances: "Where a plaintiff serves a complaint on a foreign state defendant under the FSIA, the foreign state defaults, and then the plaintiff files an amended complaint, service of the new complaint is only necessary if the changes are 'substantial.'" *Shoham v. Islamic Republic of Iran*, 922 F. Supp. 2d 44, 47 (D.D.C. 2013) *citing*, *Belkin v. Islamic Republic of Iran*, 667 F. Supp. 2d 8, 20 (D.D.C. 2009) ("Service of the original complaint was effected on all three Defendants under 28 U.S.C. § 1608(a)(4). Plaintiff did not serve the amended complaint on defendants. Where changes made in an amended complaint are 'not substantial,' the requirement



of Rule 5(a)(2) of the Federal Rules of Civil Procedure that a pleading that states a new claim for relief against a party in default must be served on that party is not applicable.”); *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 46 (D.D.C. 2006) (“Even were these changes characterized as substantive Iran, the MOIS and the IRGC had fair notice of the allegations and relief sought, because the changes to the third amended complaint were not substantial. ...Accordingly, this Court will not require plaintiff to serve the amended complaint.”); *Dammarell v. Islamic Republic of Iran*, 370 F. Supp. 2d 218, 225 (D.D.C. 2005) (“[S]ection 1608 is inapplicable in the setting where the defendant foreign state has failed to appear, and is therefore in default, and where an amendment does not add any claims but instead clarifies existing claims.”)

In this case, the Plaintiffs only seeks to correct typographical errors and certain inaccuracies regarding the relationship of the Plaintiff to the September 11<sup>th</sup> decedent, or to otherwise clarify the record. Because these changes are insubstantial, no additional service of the amended pleadings should be required.

### CONCLUSION

The corrections requested by Plaintiffs are clerical in nature and serve to clarify the record. They do not affect the substance of any claims made in the above-referenced action. Moreover, the corrections are necessary to the administration of justice inasmuch as not making them will potentially affect the rights of the incorrectly identified plaintiffs to enforce and collect on any judgment this Court enters in their favor. For the foregoing reasons, plaintiffs respectfully request that this Court permit the proposed amendments without requiring service on Iran.

Dated: April 17, 2019

/s/ Jerry S. Goldman

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